

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

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DEC 16 2015
CLERK'S OFFICE
U.S. DISTRICT COURT
ANN ARBOR, MI

**JANE DOE and JOHN DOE,
husband and wife,**

Plaintiffs,

Case No: 13-cv-14358-JCO-MKM

vs.

HON. JOHN CORBETT O'MEARA

ETIHAD AIRWAYS, P.J.S.C.,

Defendant.

STIPULATION AND ORDER OF DISMISSAL,
WITH PREJUDICE AND WITHOUT COSTS

IT IS HEREBY stipulated and agreed by the parties:

1. Plaintiff JANE DOE filed her cause of action for damages under Article 17 of the Montreal Convention against Defendant, ETIHAD AIRWAYS, P.J.S.C, ("ETIHAD") following an alleged needlestick injury aboard Defendant's aircraft while in international carriage. Plaintiff JOHN DOES's cause of action was derivative to JANE DOE's claim, alleging loss of consortium.
2. The Montreal Convention provides the only mechanism of recovery for the Plaintiffs against Etihad.
3. The parties completed discovery on issues of 1) liability, including beyond the first-tier of strict liability, and 2) Plaintiffs' damages.

4. The *gravamen* of JANE DOE's claimed damages were the emotional or mental distress damages, which include, without limitation, the fear of developing HIV/Hepatitis, outrage, embarrassment, mortification, guilt, loss or denial of certain pleasures of life and shock.

5. ETIHAD filed a Motion for Partial Summary Judgment [DE 19] requesting the Court dismiss JANE DOE's mental or emotional distress damages and JOHN DOE's derivative claim, which the Court did in its Opinion and Order Granting Defendant's Motion for Partial Summary Judgment [DE 27].

6. Following the Opinion and Order Granting Defendant's Motion for Partial Summary Judgment [DE 27] on October 13, 2015, the only remaining claim was for JANE DOE's damages for the physical pain and suffering caused by the needlestick, and the economic damages for medical services, both of which are *de minimis* in context of the now-dismissed claims. JOHN DOE's claims were dismissed in the entirety.

7. The Opinion and Order Granting Defendant's Motion for Partial Summary Judgment therefore reflected an involuntary adverse judgment against JANE DOE on everything but an insignificant portion of her damages; and a complete dismissal of JOHN DOE's claim.

8. As trial of the remaining issues would not materially advance the ultimate termination of this litigation, the parties reached a settlement on the physical

pain and suffering damages and economic damages, only, expressly allowing for Plaintiffs' immediate appeal of the Court's Order.

9. Through this Stipulation and Order, Plaintiffs notify the Court and the Defendant that they seek a final order of dismissal, with prejudice and without costs or attorney fees, for the sole purpose of obtaining an expeditious appellate review of the Opinion and Order Granting Defendant's Motion for Partial Summary Judgment [DE 27].

/s/ Mark Kelley Schwartz

MARK KELLEY SCHWARTZ (P48058)
Attorney for Plaintiffs

/s/ Scott W. Torpey

SCOTT W. TORPEY (P36719)
Attorney for Defendant Etihad

/s/ Andrew J. Harakas

ANDREW J. HAKAKAS (P39829)
Attorney for Defendant Etihad

**ORDER OF VOLUNTARY DISMISSAL WITH
PREJUDICE AND WITHOUT COSTS**

The parties having stipulated as provided above, and in reliance on same, pursuant to Fed. R. Civ. P. Rule 41(a)(2), it is hereby ORDERED that the within cause of action shall be dismissed, in full, with prejudice, and without costs or attorney fees.

This is a final Order resolving all remaining claims and closes the case.

Date: December 16, 2015



John Corbett O'Meara
United States District Judge